IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 470 OF 2007.
AND
APPEAL FROM ORDER NO. 471 OF 2007.

Rajendraprasad Ramdatta Pasi. ... Appellant.
(In both appeals)

Versus.

Ramdatta Shitalaprasad Pasi. ... Respondent.
(In both appeals)

Shri M.S.Kumthekar for the Appellant in both appeals.

Shri Rakesh D.Dave for the Respondent in both appeals.

CORAM : ABHAY S.OKA, J.

DATED : 15th June, 2007.

P.C.:

1. Heard the Advocates appearing for the parties. The Appellant in both the Appeals is the son of the Respondent. There are cross suits filed by the son and the father against each other. Both of them are claiming to be in possession of the suit premises. The dispute relates to shop No.4 on the ground floor of the building known as Anil Bhavan, Jerbai Wadia Road, Parel, Mumbai.

2. Notice of Motion taken out by the Appellant in his suit has been dismissed and the Notice of Motion taken out by the Respondent in his suit has been made absolute. The trial Court has accepted the case made out by the Respondent-father that he is in possession of the suit shop.

3. The learned Advocate for the Appellant submitted that for last several years the Respondent-father is never in possession and it is the Appellant who is carrying on business. He pointed out a letter dated 26th April 2002 allegedly sent by the Respondent to the landlord. He submitted that the result of the impugned order will be ousting the Appellant from the possession of the suit premises.

4. I have considered the submissions. There is a serious dispute about the execution of letter dated 26th April 2002 raised by the Respondent. In so far as the documentary evidence is concerned, the rent receipt and electricity bills in respect of the suit premises are standing in the name of the Respondent-father. Even the licences and permits of the business are standing in the name of the Respondent-father. In the ration card at the address of the suit premises, the name of the Respondent appears as the head of the family. Considering all these documents, the trial Court has accepted the case made out by the Respondent that he is in possession on the date of institution of the suit.

5. The order of the trial Court is passed on a Notice of Motion invoking the provisions of Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908.

The prima-facie finding of the trial Court is based on the documentary evidence on record. No case is made out for interference with the discretionary order passed by the trial Court.

6. The Appeals are dismissed. It is made clear that all contentions of the parties on merits of the pending suits are expressly kept open and the suits will be decided without being influenced by the tentative findings recorded by the trial Court in the impugned order and the confirmation thereof by this Court.

Judge.